



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Three hundred twenty-fourth meeting
Tuesday
August 14, 2012**

**Room 414
State Capitol
Pierre, South Dakota**

The three hundred twenty-fourth meeting of the Rules Review Committee was called to order by Chair Senator Jean Hunhoff at 9:00 a.m. CDT, August 14, 2012, in Room 414 at the State Capitol, Pierre, South Dakota and via the Digital Dakota Network (DDN) at the following locations: Northern State University, 1200 S. Jay St., Room Lib 116, Aberdeen, South Dakota; Department of Human Services, 2361 Dakota Ave. S., Huron, South Dakota; Mitchell Technical Institute, 1800 E. Spruce, Room TC 155, Mitchell, South Dakota; SD School of Mines and Technology, 501 E. St. Joseph St., Room CB 109, Rapid City, South Dakota; University Center, 4801 N. Career Ave., Room FADM 145, Sioux Falls, South Dakota; and the Department of Transportation, 1306 W. 31st St., Yankton, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Angie Buhl, Jean Hunhoff (Chair), and Mike Vehle; and Representatives Peggy Gibson, Roger Hunt, and R. Shawn Tornow (Vice Chair). Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

Approval of Minutes

Representative Gibson moved, seconded by Representative Hunt, that the minutes of the July 10, 2012, meeting be approved. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.

Rules Reviewed

Department of Education: Board of Education – Amend a rule to require the minimum professional performance standards for evaluating teacher performance to be aligned with the Charlotte Danielson framework for teaching beginning in the 2014-2015 school year.

Ms. Melody Schopp, Secretary, and **Ms. Bobbi Rank** reviewed the proposed rule.

Representative Tornow expressed concern with the delayed implementation.

Representative Gibson moved, seconded by Senator Vehle, to approve the rule proposed by the Department of Education: Board of Education. Motion prevailed on a roll call vote with 5 ayes, 1 nay. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member voting nay: Tornow.

Department of Education: State Library Board – Amend rules to establish a program of full and affiliate depository libraries for state publications, and to specify how state agencies are to supply the State Library with digital and/or non-digital copies of their publications for inclusion in the program.

Mr. Dan Siebersma, State Librarian, reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Buhl, to approve the rules proposed by the Department of Education: State Library Board. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.

Bureau of Administration – Amend rules to increase the maximum fees chargeable for legal publications required by state law.

Mr. Jeff Holden reviewed the proposed rules.

Public Testimony

Mr. Holden read a letter the bureau had just received from **Ms. Dianna Miller**, lobbyist for the Large School Group, in opposition to the proposed fee increase (**Document 1**).

Mr. David Bordewyk, Sioux Falls, representing the South Dakota Newspaper Association, spoke in support of the proposed rules.

Ms. Yvonne Taylor, Pierre, representing the South Dakota Municipal League, spoke in opposition to the proposed rules.

Following a brief discussion of the history of past fee increases and whether it was a "nominal" fee increase, *Representative Tornow moved, seconded by Representative Gibson, to revert the rules proposed by the Bureau of Administration back to a prior step for additional hearing.*

Senator Hunhoff moved a substitute motion, seconded by Senator Buhl, to give notice to the Bureau of Administration of the committee's intent to hold a suspension hearing regarding the proposed rules. The substitute motion prevailed on a roll call vote with 4 ayes, 2 nays. Members voting aye: Buhl, Hunhoff, Hunt, and Vehle. Members voting nay: Gibson and Tornow.

Department of Labor and Regulation: South Dakota Board of Accountancy – Amend rules to update references, update definitions used in continuing professional education criteria, update ethics exam name, and clarification to peer review language.

Ms. Nicole Kasin, Sioux Falls, Executive Director, reviewed the proposed rules.

Representative Gibson moved, seconded by Representative Tornow, to approve the rules proposed by the Department of Labor and Regulation: South Dakota Board of Accountancy. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.

Department of Public Safety: Office of Weights and Measures – Adopt rules to permit the sale of 85 Octane gasoline throughout South Dakota but require cautionary labeling, to specify the required retail dispenser labeling requirements, to require documentation for product quantity, grade and rating, and to define the duties of refiners, importers, producers, distributors and retailers consistent with the Code of Federal Regulations Title 16, Parts 306.5 through 306.12, inclusive.

Mr. Trevor Jones, Secretary, **Ms. Jenna Howell**, and **Mr. David Pfahler**, representing the Department of Public Safety, and **Mr. Jason Glodt**, representing the Governor's Office, reviewed the proposed rules. It was noted that the rules had been changed to limit the sale of 85 Octane gasoline to only west of the 102nd meridian, not statewide.

Public Testimony

Mr. Ron Lamberty, Sioux Falls, representing the American Coalition for Ethanol, spoke in support of the proposed rules as amended.

Ms. Dawna Leitzke, Pierre, representing the South Dakota Petroleum and Propane Marketers Association, spoke in opposition to the warning label requirement and the reference to 85 octane as "sub-regular" unleaded.

Following a discussion regarding allowing the sale of 85 octane in the state and the ASTM standards, the decision to use "meridian" instead of counties, the supply routes and availability of fuel, the need for cautionary labeling, penalties for illegally selling lower octane fuel, octane testing, compliance with the emergency rules, and the expiration of the emergency rules, *Representative Gibson moved, seconded by Representative Buhl, to give notice to the Department of Public Safety of the committee's intent to hold a suspension hearing regarding the proposed rules. Motion failed on a roll call vote with 3 ayes and 3 nays. Members voting aye: Buhl, Gibson, and Tornow. Members voting nay: Hunhoff, Hunt, and Vehle.*

Senator Vehle moved, seconded by Senator Hunhoff, to approve the rules proposed by the Department of Public Safety: Office of Weights and Measures. Motion failed on a roll call

vote with 3 ayes and 3 nays. Members voting aye: Hunhoff, Hunt, and Vehle. Members voting nay: Buhl, Gibson, and Tornow.

Representative Gibson moved, seconded by Senator Buhl, to revert the rules proposed by the Department of Public Safety: Office of Weights and Measures to a prior step for additional hearing.

Senator Vehle moved a substitute motion, seconded by Senator Hunhoff, to approve the rules proposed by the Department of Public Safety: Office of Weights and Measures without recommendation. Motion failed on a roll call vote with 3 ayes and 3 nays. Members voting aye: Hunhoff, Hunt, and Vehle. Members voting nay: Buhl, Gibson, and Tornow.

Representative Gibson's motion to revert the rules to a prior step failed on a roll call vote with 3 ayes and 3 nays. Members voting aye: Buhl, Gibson, and Tornow. Members voting nay: Hunhoff, Hunt, and Vehle.

Chair Hunt deferred action on the rules proposed by the Department of Public Safety: Office of Weights and Measures to the committee's September 18th meeting. (Note: This meeting was rescheduled later to September 12th.)

Department of Environment and Natural Resources: Water Management Board – Amend rules to provide definitions of terms "livestock" and "confinement operation" and repeal the definition of "stock watering;" remove the requirement that the Water Management Board have an official seal; modify definition of water uses requiring a water permit or right in part due to statutory changes; repeal definition of what is not a water distribution system; reduce the requirements for registering a domestic well as well as for completing applications for water permits and vested water right claims; remove the reference to a public hearing in the assignment of a number to a permit application; remove references to publication of notices a second time and reduce the number of days needed to issue a water permit; and modify who can provide irrigation water use information to the chief engineer and how the information can be reported.

Mr. Ron Duvall reviewed the proposed rules.

Senator Vehle moved, seconded by Senator Buhl, to approve the rules proposed by the Department of Environment and Natural Resources: Water Management Board. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.

Department of Agriculture: Animal Industry Board – Amend rules to relax the requirements for a certificate of veterinary inspection to accompany cats and dogs entering the state with their owners for a period of less than 30 days and update current dates of reference material.

Dr. Dustin Oedekoven, State Veterinarian and Executive Director for the board, reviewed the proposed rules.

Representative Gibson moved, seconded by Representative Tornow, to approve the rules proposed by the Department of Agriculture: Animal Industry Board. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.

Department of Game, Fish and Parks – Amend a Uses of Parks and Public Lands rule to establish an exemption to the rule which prohibits unleashed dogs in state parks in order to allow the Department to establish "dog training areas" in state parks, state recreation areas, state nature areas and state lakeside use areas; amend Park Licenses and Camping Permits and Rules to incorporate Shep's Canyon on the west shore of Angostura Reservoir in Fall River County into the existing Angostura Recreation Area and require users of the area to pay camping fees and possess a valid park entrance license; amend a Hunting Requirements and Prohibited Methods rule to further define "bait station" and place additional restrictions on the times when bait stations are prohibited for attracting big game for the purpose of hunting; amend East River Deer Hunting Season rules to adjust the number of licenses/tags available and provide that only unfilled "antlerless deer" and "antlerless whitetail deer" tags are valid during the antlerless deer season extension beginning on the Saturday after Christmas; amend Antelope Hunting Season rules to adjust the number of licenses/tags available and open antelope hunting season to residents only; adopt a Black Hills Elk Hunting Season rule to allow the winner of the elk tag issued in conjunction with the annual Elk License Raffle to hunt not only in Custer State Park but also in any unit where "any elk" licenses are issued during the Black Hills Elk season; amend National Wildlife Refuge Deer Hunting Season rules to adjust the number and types of licenses/tags available at Sand Lake National Wildlife Refuge, Lacreek National Wildlife Refuge, and Waubay National Wildlife Refuge; amend a Youth Waterfowl Hunting Season rule to adjust the season starting date from the Saturday prior to the last Saturday of September to 12 days after Labor Day; amend an Early Fall Canada Goose Hunting Season rule to increase the daily bag limit and the possession limit (subject to the approval of the U.S. Fish and Wildlife Service); and amend Dog Training rules to eliminate dog training daily bag and possession limit requirements that are currently imposed during the hunting seasons, and differentiate between captive game birds that are taken by hunters and those taken during dog training, field trials, and similar events/contests.

Mr. Tony Leif reviewed the proposed rules.

Senator Hunhoff moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.

Department of Game, Fish and Parks – Amend Hunting Requirements and Prohibited Methods rules to create accompaniment allowances for big game hunters and place the responsibility for adherence to the rule on the accompanying person who is not licensed to hunt big game, and allow for use of smokeless powder and peep sights and other optics that do not employ magnification during seasons restricted to Muzzleloading rifles; amend

Waterfowl Hunting Seasons rules to increase the daily bag limit for redheads; increase the Canada goose daily bag limit and possession limit, and make corrections to the boundary descriptions for Units 1 and 2; amend a Bait rule to add the East Vermillion River, West Vermillion River, and Firesteel Creek below Lake Mitchell to the list of waters that are closed to the commercial and noncommercial taking of bait; and adopt Wildlife Rehabilitation rules to initiate a formalized program for the temporary care, rehabilitation, and release of certain resident wildlife species.

Mr. Leif reviewed the proposed rules. He noted that the US Fish and Wildlife Service did not approve a change in the daily limit for redhead ducks so that rule change had been withdrawn.

Senator Hunhoff moved, seconded by Senator Buhl, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.

Department of Game, Fish and Parks – Amend Trapping Prohibitions rules to clarify the dimensions of colony traps used for muskrat trapping, and require on public lands and public road rights-of-ways statewide, the body grip traps with an opening greater than 36 sq. inches (larger than 160 Conibears) when used in conjunction with any bait, lure, or scent be recessed a minimum of seven inches in cubbies, baited box traps, or bucket traps. (*These rules were reverted back for additional hearing at the July 10th Interim Rules Review meeting.*)

Mr. Leif reviewed the proposed changes that had been made to the trapping rules since the last meeting.

Representative Gibson commented that the trappers that had appeared at the July 10th meeting were still opposed to the rules, even as amended.

Representative Hunt moved, seconded by Senator Hunhoff, to approve the trapping rules proposed by the Department of Game, Fish and Parks.

Representative Gibson moved a substitute motion, seconded by Senator Buhl, to give notice to the Department of Game, Fish and Parks of the committee's intent to hold a suspension hearing regarding the proposed trapping rules. Motion failed on a roll call vote with 2 ayes and 4 nays. Members voting aye: Buhl and Gibson. Members voting nay: Hunhoff, Hunt, Tornow, and Vehle.

Representative Hunt's motion to approve prevailed on a roll call vote with 4 ayes, 2 nays. Members voting aye: Hunhoff, Hunt, Tornow, and Vehle. Members voting nay: Buhl and Gibson.

Department of Transportation: Transportation Commission – Amend rules to extend a 25 mile per hour limited speed zone on U.S. Highway 83 entering Mound City further north

and correct a legal description; and create a 45 mile per hour limited speed zone on State Trunk Highway 248 through Draper and correct a legal description.

Mr. Bill Nevin reviewed the proposed rules.

Representative Hunt moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Transportation. Motion prevailed on a roll call vote with 5 ayes, 1 nay. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member voting nay: Tornow.

Department of Transportation: Aeronautics Commission – Amend rules to eliminate a definition for "private commercial airport," add a definition for "publicly owned airport," and revise the definitions of "public airport" and "private airport;" clarify the requirement concerning licensing or approval by the Aeronautics Commission of public airports and any private airport, landing field, or heliport located within two miles of the nearest boundary of any other approved airport; and repeal a rule which sets minimum requirements for private commercial airports.

Mr. Nevin reviewed the proposed rules.

Representative Hunt moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Transportation: Aeronautics Commission. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.

Meeting Schedule

Following a brief discussion on the need to move the September meeting date, Chair Hunhoff rescheduled the meeting from September 18th to Wednesday, September 12th.

Due to scheduling conflicts, the December meeting was rescheduled from December 18th to Wednesday, December 19th. Staff will check on the availability of DDN sites.

Adjournment

Representative Hunt moved, seconded by Representative Gibson, that the meeting be adjourned. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.

Chair Hunhoff adjourned the meeting at 2:01 p.m.



All Legislative Research Council committee minutes and agendas are available at the South Dakota Legislature's Homepage: <http://legis.state.sd.us>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.aspx>).